IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 691

[redacted]

vs.

[redacted]

SUPPLEMENTAL BRIEF OF PETITIONERS

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,

vs.

ZACHARIAS RHODITIS,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONERS

Subsequent to the dispatch of Petitioners' brief to the printers, the United States District Court for the Eastern District of Virginia rendered its decision in five cases pending there which involve actions by seamen against Petitioners herein. These cases are essentially identical to the case at bar. In reaching its decision that Court followed the **Tsakonites** case from the Second Circuit and re-

APPENDIX

[*1] In the United States District Court for the Eastern District of Virginia
Newport News Division

Soterios Hiotis, Libelant, v. Greek S/S HELLENIC GLORY, etc., et al., Respondents.	}	In Admiralty No. 724.
Michael Mihalarias, Libelant, v. Greek S/S GRIGORIOS C. III, etc., et al., Respondents.	}	In Admiralty No. 739.
George Tassou, Libelant, v. Greek S/S HELLENIC TORCH, etc., et al., Respondents.	}	In Admiralty No. 740.
Panayiote Alexopoulos, Libelant, v. Greek S/S HELLENIC LAUREL, etc., et al., Respondents.	}	In Admiralty No. 742.
Theoklitos Symeonidis, Libelant, v. Greek S/S HELLENIC HERO, etc., et al., Respondents.	}	In Admiralty No. 756.

[2] MEMORANDUM, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

These five cases, all involving claims for alleged personal injuries or illnesses, were filed by Greek seamen. The issue involved is the choice of law with the seamen contending that they should be permitted to file their actions

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* Numbers appearing in brackets in text indicate page numbers of original memorandum, findings of fact and conclusions of law.

under American law, specifically the Jones Act, whereas the shipowner contends that Greek law should control the final outcome. In **Tsakonites v. Transpacific Carriers Corp.**, 368 F. (2d) 426 (2 Cir., 1966), cert. denied, 386 U. S. 1007, the Second Circuit decided the controversy in favor of Greek law. However, in **Hellenic Lines v. Rhoditis**, 412 F. (2d) 919 (5 Cir., 1969), cert. granted, a contrary conclusion was reached. We agree with the Second Circuit and hold that Greek law applies.

The Court makes the following—

Findings of Fact

1. These five cases, all involving suits by Greek seamen primarily for personal injuries or illnesses received while serving aboard different vessels operated by Hellenic Lines, Ltd., have a common issue of law and fact on the preliminary question of what law should be applied to these actions. While American wage law violations have also been alleged in each of the five libels,[1] in addition to claims for damages [3] and maintenance and cure, the Court reserves its ruling on the wage claims until a later time.

2. The actions are against the owners and operators of five **Greek Flag** vessels. In addition to the personal injury or illness claims, there are allegations of maintenance and cure.

3. All five libelants are Greek citizens. At least four of them are residents of Greece; one is possibly now residing in Canada. Hellenic Lines, Ltd., against whom the force of these actions is directed, is a Greek corporation having

[1] While the libels allege wage claims, four of the seamen have testified and either denied that any wages were due or have not asserted same. However, if, in fact, there was any violation of the American wage statute, as applied to foreign vessels, this would not foreclose the right of the particular seaman to recover.

been continuously in existence since its incorporation in 1934. Hellenic Lines was the employer of the five seamen and completely operated, managed, controlled and crewed the five vessels involved in these actions.

4. Hellenic Lines was the registered owner of the SS GRIGORIOS C. III. The registered owners of the remaining four vessels were as follows: SS HELLENIC GLORY, owned by Transpacific Carriers Corporation; SS HELLENIC TORCH, owned by Transpacific Carriers Corporation; SS HELLENIC LAUREL, jointly owned by Transpacific Carriers Corporation and Universal Cargo Carriers, Inc.; SS HELLENIC HERO, owned by Universal Cargo Carriers, Inc. Transpacific Carriers Corporation and Universal Cargo Carriers, Inc., were both Panamanian corporations established about 1956 to own these and other vessels operated by Hellenic Lines.

5. All vessels flew the flag of the Kingdom of Greece.

[4] 6. More than ninety-five percent of the stock of Hellenic Lines, Ltd., was owned by Pericles Callimanopoulos, a Greek citizen presently residing in the United States. Transpacific and Universal were subsidiary corporations of Hellenic Lines, Ltd., which owned all of their stock, with the exception of qualifying shares owned by the Panamanian directors.

7. In addition to flying the flag of the Kingdom of Greece, each vessel had Greek articles; each was registered under the laws of Greece with a home port designated as Piraeus, Greece. The vessels were completely manned and crewed by Greeks.

8. Each of the Libelants was hired by and signed a contract of employment in Greece with Hellenic Lines and was thereafter signed on Greek articles of the respective vessels in various ports. The contracts of employment each provided that the seamen were signing for one round voyage. The contracts of employment further provided

for the exclusive application of Greek law in paragraph 3 thereof as follows:

> "This contract is governed exclusively by Greek Laws and Greek Collective Bargaining Agreements.
>
> "It is moreover agreed that any claim or contention resulting from this enlistment or contract or based in any manner directly or indirectly on this contract or based in any manner directly or indirectly on any work or occupation undertaken on the ship by the seaman will be considered and judged exclusively and only by Greek Courts of Justice."

[5] The Collective Agreement referred to was a contract between a seamen's union and the shipowners which provided in Chapter XVIX:

> **"Solution of Individual Disputes**
>
> "1. Individual contracts of employment, on which the present Collective Agreement applies, will be governed exclusively, as far as any claim or right arising out of the seafarer's employment, including claims on account or illness or accident, by the provisions of the present Collective Agreement and Greek Law, being judged exclusively by the competent Greek Law Courts, resort to any foreign Courts and to any foreign Law being prohibited and expressly ruled out.
>
> • • • • • • • •
>
> "3. It is hereby mutually agreed, that non-observance of the provisions of the present Chapter by a seafarer constitutes a break of duty."

9. There is no direct evidence as yet reflecting that the five seamen were members of a seamen's union, but the Court is confident that such fact will be established. In any event, there is nothing illegal or improper in requiring a nonunion seaman to be bound by the same contractual terms as a union seaman.

10. After the seamen signed their contracts of employment in Greece they served aboard their respective vessels as follows:

Libelant and his rating	Signed on[2]	Signed off[2]	Place of accident or where illness first manifested
HIOTIS, a.b. (HELLENIC GLORY) Admiralty 724	Sept. 24, 1961 Candia, Crete (a Greek island)	Sept. 7, 1962 Heraklion, Crete (Greece)	T. B. diagnosed at U. S. ports
MIHALARIAS, a.b. (GRIGORIOS C. III) Admiralty 739	April 18, 1962 Heraklion, Crete (Greece) (April 17, 1962, according to libelant)	June 28, 1963 New York, N. Y. for medical treatment and repatriated to Greece	Eye injury at Genoa, Italy April 23, 1963
TASSOU, carpenter (HELLENIC TORCH) Admiralty 740	August 30, 1962 Port Said, Egypt	March 4, 1963 Charleston, S. C. because of illness and repatriated to Greece	T. B. first diagnosed at U. S. ports
ALEXOPOULOS, wiper (HELLENIC LAUREL) Admiralty 742	June 28, 1961 Emden, Germany (vessel began maiden voyage here)	August 1 or 2, 1961, left vessel at New York where he was classed a deserter by the Master. He later returned to Greece according to his libel	Accident or illness allegedly occurred at sea on July 8, 1961
SYMEONIDIS, chief officer (HELLENIC HERO) Admiralty 756	June 1, 1963 Heraklion, Crete (Greece)	August 24, 1963 Bombay, India, because of illness and repatriated to Greece	Illness (reactivation of T. B.) manifested itself while vessel was at or near Karachi, Pakistan, and Bombay, India

[2] Seamen on Greek vessels do not personally sign the articles, but their names are entered, for them, normally by the counsel.

11. Three of these seamen claim damages for illness (tuberculosis) and the other two claim damages for an [7] accident. It is virtually impossible for the Court to determine where the tuberculosis was first contracted by

the seamen in question. No evidence has been introduced, to date, nor is it likely that it could be produced, which could pinpoint the particular place of the origin of the tuberculosis since each of the vessels in question was continually moving from port to port during the seamen's employment. In the Symeonidis case, the libelant testified that he first got sick on the SS WORLD PEACE, a vessel aboard which he was serving prior to his service on the HELLENIC HERO, and which also is the subject of a suit by this seaman pending in this court (Admiralty No. 778), and which has been consolidated with these five cases for the purpose of determination of liability on the merits.

While it is undisputed that Mihalarias received an eye injury in an accident in Genoa, Italy, while serving on the SS GRIGORIS C. III, the evidence thus far introduced in the case of **Alexopoulos v. The SS HELLENIC LAUREL** would indicate that this seaman sustained no accident but merely suffered from a scalp condition diagnosed by two doctors as being a form of dandruff.

In any event, all of the seamen returned to Greece and received medical treatment there, the three with tuberculosis being given free treatment at the Seamen's Home which is specially set up to treat this disease. There is no suggestion from the foregoing that any seaman is cured.

[8] 12. In the three illness cases the claims of the three seamen have been litigated in the courts of Greece. In each of these three cases the Greek courts ruled in favor of the shipowner and declared that the amount tendered was the proper amount to which the seamen were entitled under Greek law. The seamen have either accepted the amount of the judgment or the sum of money has been deposited by the shipowner with a public notary and can be claimed by the seamen at anytime.

Michael Mihalarias, through counsel, filed a suit against Hellenic Lines, Ltd., in the Court of First Instance of Piraeus seeking damages for his eye injury under Greek law (Act 551/1914). He was awarded a judgment on December 20, 1968, in the Court of First Instance of Piraeus and this judgment for 41,986 Drachmae (including court costs for a total of approximately $1,400) was paid and satisfied on December 24, 1968.

No Greek action has been filed in the fifth case, that of Alexopoulos.

The foregoing Greek judgments are not, at this time, deemed to bar any of these proceedings.

13. Much evidence and discovery has been taken concerning Hellenic Lines, Ltd., and its chief stockholder, P. G. Callimanopoulos. Callimanopoulos has always been the primary stockholder in Hellenic Lines ever since its incorporation in Greece in 1934. Hellenic Lines started out as a small shipping operation, at first limited to Mediterranean and European ports, but was extended to United States ports before or during [9] World War II. At the present time in addition to Hellenic Lines' European and Mediterranean trade routes, it has routes between the United States and Near East ports and the United States and Far East ports such as Pakistan, India, and Burma. At the time of Callimanopoulos's discovery deposition, Hellenic Lines operated 29 vessels, 16 of which were also owned by Hellenic Lines and the remaining 13 owned by one or both of the two Panamanian subsidiary corporations. The vessels all make occasional stops in Greece either for cargo or crew changes and provisions or both.

14. Hellenic Lines' home office has always been in Piraeus, Greece, where about 75 employees work. After World War II, a branch office of Hellenic Lines was established in New York and this office has now grown to

the point where it is larger than the office in Piraeus in that approximately 100 persons are employed there. Hellenic Lines also has a very small office in New Orleans, Louisiana, and other offices or agents at various ports throughout the world. Callimanopoulos himself, the general manager, moved to the United States in 1945 or 1946, and later became a resident alien. He lives in a home in Greenwich, Connecticut, and has his office in New York City. However, he also travels to various countries of the world in connection with the business of Hellenic Lines and, according to Captain Makris, still maintains a home in a suburb of Athens, Greece. Callimanopoulos was not interrogated as to a home near Athens.

[10] 15. The financial operations of Hellenic Lines in the United States exceed its financial operations in any other one country. For the purpose of determining the issues now raised in these cases, the Court assumes that fifty-one percent (51%) of the substantial contacts of Hellenic Lines have been within the United States.

16. The board of directors of Hellenic Lines, Ltd., consists entirely of Greek citizens, with one exception:

P. G. Callimanopoulos, General Manager, a resident of the United States

G. P. Callimanopoulos, son of P. G. Callimanopoulos, and resident of the United States (who no longer takes an active part in the company)

Takis Zakas, President, a resident of Greece

Theodore Pangos, Vice President, a resident of Greece

P. Papadopulos, a resident of Greece

L. Antonopulos, a resident of Greece

T. Tagaris, a resident of England

Frank Slater, a citizen and resident of the United States, who is described by Mr. Callimanopoulos as an "honorary" director who has never attended any meeting of the company.

The Court is uncertain as to the status of a so-called "honorary" director, but assumes that it is a director who never attends any meetings.

17. While Callimanopoulos testified that President Zakas is the principal executive officer and that Vice President Pangos is the managing director, there is no doubt that Callimanopoulos, being general [11] manager and principal stockholder, is the dominating and controlling factor in Hellenic Lines.

18. Hellenic Lines, Ltd., according to its original charter in 1934 which was good for twenty (20) years, had 20,000 shares outstanding, and Article 23 of the Articles of Association of the corporation requires each director to be the holder of at least 50 shares. There is no evidence as to the current requirement as to holdings.

19. Hellenic Lines' operations are far flung, it having substantial business contacts with many countries in the world. Most cargo matters are handled from the New York Office while the Piraeus Office issues instructions concerning the internal management of the vessels such as crew matters. The Court holds that there are substantial business and financial contacts by Hellenic Lines with the United States and also with Greece, as well as with other countries. While exact percentage figures showing the amount of business done in each country has not been required to be produced by the respondents, the Court holds and the respondents concede that more business of Hellenic Lines originates and terminates in the United States than with any other single country. The Court further holds that since the ultimate control of all three of the respondent corporations is with P. G. Callimanopoulos, that this ultimate control is exercised primarily in the United States from his office in New York.

[12] 20. In 1955, the wife of P. G. Callimanopoulos, Mrs. Anna Callimanopoulos, a resident of Greenwich Connecti-

cut, received a broad power of attorney for the purpose of handling the affairs of Hellenic Lines, Ltd., whenever her husband might be absent from the United States.

In the words of the minutes of the Board of Directors dated September 1, 1955:

> "* * * the Director General, Mr. Pericles Kallimanopoulos (sic) will probably be absent from New York for a long period, * * * it is therefore necessary that the Board of Directors proceed to the appointment, as a general attorney and representative of the company of Mrs. Anna, wife of Pericles Kallimanopoulos (sic).
>
> "Passing resolutions by unanimous vote, the Board of Directors authorizes Mrs. Anna, wife of Pericles Kallimanopoulos (sic), resident of Greenwich, Connecticut, United States of America, and constitutes her as representative of the company * * *"

21. Callimanopoulos refers to a Mr. Cajzer, a resident of the United States, as the treasurer of Hellenic Lines. Another witness called Cajzer a "paymaster". Callimanopoulos thinks that Cajzer is a citizen of the United States.

[13] 22. The Accounting Department of Hellenic Lines, Ltd., is headed by a Mr. Arnold with offices at 39 Broadway, New York, New York.

23. Gerald Hennessy, the Claims Manager of Hellenic Lines, Ltd., is a United States citizen with offices at 39 Broadway, New York, New York.

24. Universal Cargo Carriers, Inc., and Transpacific Carriers Corporation are Panamanian corporations whose corporate papers were drawn up by a lawyer in New York. These two Panamanian corporations each have a registered office in Panama, but neither actually has an

office in Panama in the sense that Hellenic Lines, Ltd., has in New York. No business is conducted in Panama except corporate paperwork. As noted above, the beneficial interest of better than ninety-five percent of the stock of these corporations is owned by Mr. P. G. Callimanopoules, a Greek citizen who has been living in the United States since 1945 or 1946.

25. The names, addresses, and citizenship of the officers and directors of Universal Cargo Carriers, Inc., are not disclosed by the record. Callimanopoulos stated, at the time of his deposition, that he would provide this information. He also indicated that "for all he knows" they may be United States residents. The Court does not believe it material in any event as the stock was wholly owned by Hellenic Lines. It is likely that they are Panamanian citizens but, undoubtedly, they serve at the direction of Callimanopoulos.

[14] 26. The officers of Transpacific Carriers Corporation are as follows:

President—Ida I. DePreciado
Vice President—Ricardo A. Durling
Secretary-Treasurer—Dageberte Perez M.

27. While the principal office of Hellenic Lines is located at 39 Broadway, New York, New York, the home office is in Greece. Hellenic Lines owns the entire pier at the foot of 57th Street in Brooklyn, New York. The record is not clear on the point, but it appears that Hellenic Lines has approximately 100 longshoremen or dock workers on its payroll in the New York Office, presumably to maintain the Brooklyn pier.

28. The largest part of the business of Hellenic Lines, Ltd., is conducted from the United States in regularly scheduled general cargo services operated from the United States East Coast and Gulf Ports to the Near East and

the Far East using nineteen of the twenty-nine Greek flag vessels owned by the Callimanopoulos interests and, in addition, utilizing forty-two non-Greek time-chartered flag vessels for undisclosed periods of time in the five years prior to January 10, 1964.

29. More than fifty percent (50%) of the dollar volume of the cargo business of Hellenic Lines is derived from cargo originating or terminating in the United States. The volume of cargo business done by Hellenic Lines in Greece is small and, as heretofore [15] indicated, the vessels visited Greece relatively few times, generally for a crew change or on long voyages involving Pakistan or Burma. In some instances, when the Suez Canal was open, the new crew members were flown to Suez.

30. There is a conflict as to whether new Articles, opened generally every six months, were usually opened in New York. In any event, wherever opened, the record indicates that the vessels involved herein were engaged in voyages beginning and ending in the United States.

Conclusions of Law

1. These cases all contain a common question of law and fact as to the preliminary issue of applicable law. The same question regarding the law to be applied to claims of Greek seamen suing Hellenic Lines has recently been decided in the Courts of Appeals for the Second Circuit and the Fifth Circuit. The Second Circuit decided the question in favor of Greek law. **Tsakonites v. Transpacific Carriers Corp.**, 368 F. (2d) 426 (2nd Cir., 1966), cert. denied 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. (2d) 434. However, the Fifth Circuit has decided the question in favor of the application of American law. **Hellenic Lines, etc. v. Rhoditis**, 412 F. (2d) 919 (5th Cir., 1969), cert. granted. For the reasons stated below, the Court holds that Greek law should be applied in these cases as was done in the **Tsakonites** case.

[16] A. Any discussion of the question of applicable law must start with the leading case on this point, **Lauritzen v. Larson**, 345 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953), where the Supreme Court listed and discussed seven factors to be considered in determining the proper choice of law: (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance or domicile of the injured party, (4) the allegiance of the shipowner, (5) the place of the contract, (6) the inaccessibility of the foreign forum, and (7) the law of the forum. We shall take up these points in order as applied to the facts in the present case.

(1) Place of the Wrongful Act

This factor was given little weight by the Supreme Court which later decided in **Romero v. International Terminal Operating Co.**, 358 U. S. 354, 79 S. Ct. 468, 3 L. Ed. (2d) 368, reh. denied 359 U. S. 962, 79 S. Ct. 795, 3 L. Ed. (2d) 769 (1959), that the place of the tort was a purely fortuitous circumstance and should not control.

In the three present illness cases, since it cannot be determined precisely where the tuberculosis was first contracted or first arose, this factor does not favor the application of the law of any particular country other than perhaps that of the law of the flag (Greece).

In the case of the injury to Mihalarias, this occurred at Genoa, Italy, and would favor the application of Italian law. In the case of the injury [17] to Alexopoulos, this occurred at sea and likewise does not favor the application of any law other than that of the law of the flag (Greece).

(2) Law of the Flag

In **Lauritzen**, *supra*, 345 U. S. at 584, the Court stated that "perhaps the most venerable and universal rule of

maritime law relevant to our problem is that which gives cardinal importance to the law of the flag." At 585-586, the Court continued:

> "It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law. As this Court held in **United States v. Flores**, *supra*, at 158, and iterated in **Cunard Steamship Co. v. Mellon**, *supra*, at 123:
>
> > 'And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require * * *'
>
> [18] "This was but a repetition of settled American doctrine.
>
> "These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears."

The Fourth Circuit, in **Southern Cross Steamship Co. v. Firipis**, 285 F. (2d) 651 (4 Cir., 1960), following **Lauritzen**, acknowledged that the law of the flag is the most important factor in determining applicable law, but went on to add that "The flag must not be one of convenience merely but bona fide." The Court held that the Honduran flag of a vessel whose only contacts with Honduras were the flag and the articles was nothing more than an illusory flag of convenience. The Court then stated that since substantial contacts existed with the United States, the District Court was warranted in applying American law.

Here the Greek flag of the Hellenic Lines is bona fide and not merely a flag of convenience. In addition to flying the flag of the Kingdom of Greece, each vessel had Greek articles, each was registered under the laws of Greece with a home port designated as Piraeus, Greece. The vessels were completely manned and crewed by Greeks who signed contracts of employment in Greece (agreeing to be governed by Greek law). Hellenic Lines owns one of the vessels outright and owns virtually all of the stock of the subsidiary corporations [19] which, in turn, own the other four vessels. Hellenic Lines is a Greek corporation having been continuously in existence as such since its incorporation in 1934 and operating a large office (with approximately 75 employees) in Athens, as well as its New York Office. Callimanopoulos, the general manager and owner of most of the stock, is a citizen of Greece although he lives in Connecticut as a resident alien of the United States.

Since the flag is not merely one of convenience, it is entitled to the strong significance given to it as a key factor under **Lauritzen** in determining the applicable law.

(3) Allegiance or Domicile of the Injured

Next to the law of the flag, the Supreme Court gives the most importance to the allegiance or domicile of the injured along with the fourth factor concerning the allegiance of the shipowner. Here all five seamen were Greek citizens and domiciled in Greece which argues for the application of Greek rather than American law.

(4) Allegiance of the Shipowner

Hellenic Lines was the registered owner of the GRIGORIOS C. III and the owner pro hac vice of the remaining four vessels which were registered in the names of

the Panamanian corporations whose stock was owned by Hellenic Lines. There is no doubt from the facts that Hellenic Lines is a bona fide Greek corporation having been in existence and having had its home office in Piraeus, Greece, since 1934.

[20] If we look beyond the corporate structure to the allegiance of the principal stockholder, P. G. Callimanopoulos, we find that he is and always has been a Greek citizen and therefore owes allegiance to the Kingdom of Greece even though he has become an American resident. No case before **Rhoditis**, *supra*, has held that **mere residence** in the United States by the principal officer of a foreign shipowner is enough to disregard the vessel's flag and apply American law. While some cases have applied American law in instances of American citizens operating foreign flag vessels, we note that even the factor of American citizenship by the shipowner is not always enough, standing alone, to apply American law. **Mpampouros v. Steamship Auromar**, 203 F. Supp. 944 (D. Md., 1962); **Moutzouris v. National Shipping & Trading Co.**, 194 F. Supp. 468 (previous opinion 196 F. Supp. 82) (S. D. N. Y., 1961); **Markakis v. The Mparmpa Christos**, 161 F. Supp. 487 (S. D. N. Y., 1958); **Mproumeriotis v. Seacrest Shipping Co.**, 149 F. Supp. 265 (S. D. N. Y., 1957); **Argyros v. Polar Compania De Navegacion, Ltda.**, 146 F. Supp. 624 (S. D. N. Y., 1956).

(5) **Place of Contract**

While this factor was not given too much importance by the Supreme Court, we should point out that all five libelants signed contracts of employment in Greece prior to joining their vessels in Greece (Hiotis, Mihalarias and Symeonidis) while the other two were sent from Greece to join their vessels (Tassou joined at Port Said and Alexopoulos at Emden, Germany). [21] The factor of the

place of the contract therefore favors the application of Greek rather than American law.

Furthermore, since each of the libelants agreed in his contract of employment for the exclusive application of Greek law, there is no reason each should not be bound by his agreement to have Greek law applied if not contrary to public policy. We know of no reason or public policy why a Greek seaman, who signs a contract of employment in Greece with a Greek corporation (Hellenic Lines) for service aboard a Greek flag vessel, crewed and operated by Greeks, should not be bound by his agreement to have his rights determined by Greek law. We refrain from commenting as to the agreement that only Greek courts are vested with jurisdiction as to any controversy. Indeed the Supreme Court in Lauritzen indicates that such a contract of this type should be upheld. The Court stated, 345 U. S. at 588-589, 73 S. Ct. at 931-932:

> "* * * We face the fact that this contract was explicit that the Danish law and the contract with the Danish union were to control. Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag—state as their governing code. This [22] arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied. The Belgenland, 114 U. S. 355, 367, 5 S. Ct. 860, 865, 29 L. Ed. 152; The Hanna Nielson, 2 Cir., 273 F. 171. We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship."

(6) **Inaccessibility of Foreign Forum**

This factor which did not receive particular attention by the court, like the other factors considered, favors the application of Greek rather than American law. Since all five seamen are Greek citizens and residents and returned to Greece following their service on the vessels in question (although one seaman may now reside in Canada), there certainly has been no inaccessibility so far as Greece is concerned. While it appears that four of the five cases have been litigated in Greek courts, with judgments rendered awarding the seamen certain sums, the actions in Greece were all instituted many months after the filing of the cases in the United States District Court for the Eastern District of Virginia and, of course, without the knowledge and consent of counsel for libelants in the United States. Whether the Greek actions were the result of collusion between Hellenic Lines or its insurance carrier and the seamen remains an open question. While the Court does not now decide the question, the [23] Greek court judgments may possibly have binding effect on the present cases on the principle of international comity. **Hilton v. Guyot**, 159 U. S. 113, 16 S. Ct. 139, 40 L. Ed. 95 (1895); **Ingenohl v. Walter E. Olsen & Co.**, 273 U. S. 541, 47 S. Ct. 451, 71 L. Ed. 762 (1927).

(7) **Law of the Forum**

The Supreme Court in **Lauritzen** rejected the contention that the law of the forum should be given any significant weight in determining what law is to be applied and need not be considered further here.

B. Each of the relevant factors of **Lauritzen** points towards the application of Greek rather than American law. The injuries did not occur in the United States and where the illness originated can never be precisely determined; there is a bona fide Greek flag; the seamen are Greek;

the shipowner is a citizen of Greece although its principal officer is a resident alien of the United States; the contracts were signed in Greece; and it has been possible for the seamen to litigate their cases in Greece.

Libelants list a number of factors in support of a "balancing of contacts" theory: (a) the principal owner of Hellenic Lines has regularly resided in the United States since about 1945 and has been a permanent resident alien since about 1951; (b) the control of the corporation whenever the owner is absent from the United States is vested in his wife, a resident of the United States; (c) more than 50% of the dollar volume of the cargo business of Hellenic Lines is derived from Cargo either originating or terminating in the United States; (d) regularly scheduled cargo service originates from the United States. In support of this theory, libelants [24] cite **Rhoditis**, *supra*; Judge Waterman's dissent in **Tsakonites**, *supra*, **Firipis**, *supra*, and several other cases from the Second Circuit.

We have serious doubts whether a balancing of contacts theory should ever be used to determine whether the Jones Act should be applied when the vessel sails under a bona fide foreign flag. In **McCulloch v. Sociedad Nacional**, 372 U. S. 10 (1962), the Court held that the National Labor Relations Board could not use a balancing of contacts test to extend the coverage of the National Labor Relations Act to the crews of vessels beneficially owned by a corporation organized and doing business in the United States, where each of the vessels makes regular sailings between the United States, Latin America, and other ports, is legally owned by a foreign subsidiary of the American corporation, flies the flag of a foreign nation, carries a foreign crew, and has other contacts with the nation of its flag. In footnote 9, the Supreme Court specifically reserves the Jones Act question, but hints that it would tend to follow the doctrine of the law of the flag.

In reaching its conclusion, the Court states that for them "to sanction the exercise of local sovereignty under such conditions in this delicate field of international relations, there must be present the affirmative intention of the Congress clearly expressed."

Even if it is proper to balance contacts as an additional factor to be weighed in determining whether to apply United States law, we think this case offers no exception to the general rule of **Lauritzen**. There the Court, at 581-582, dealt with a similar situation [25] stating:

> "Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.
>
> "International or maritime law in such matters as this does not seek uniformity, and does not purport to restrict any nation from making and altering its laws to govern its [26] own shipping and territory. However, it aims at stability and order through usages

which considerations of comity, reciprocity and long-range interest have developed to define the domain which each nation will claim as its own. Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved. The criteria, in general, appear to be arrived at from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority. It would not be candid to claim that our courts have arrived at satisfactory standards or apply those that they profess with perfect consistency. But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

[27] Furthermore, unlike **Tsakonites**, *supra*, and **Rhoditis**, *supra*, the accidents here did not occur in United States ports and the origin of the illness must remain uncertain.

We, like the **Lauritzen** court at 593, "do not question the power of Congress to condition access to our ports by foreign-owned vessels upon submission to any liabilities it may consider good American policy to exact. But we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters." It is up to Congress, not this Court, to decide whether it is in the best interests of the United States for the Jones Act to apply to situations such as here presented so that ship-

ping lines owned by permanent aliens should be subject to the same liability as for United States lines. **Tsakonites v. Transpacific Carrier Corp.**, 368 F. (2d) 426 (2 Cir., 1966).

C. If American law is to be applied, as contended by libelants, to foreign flag vessels merely because they have substantial contact with the United States, havoc would be created in international maritime affairs. Since the United States is obviously the largest commercial center in the world, it follows that many, if not all, foreign flag ships trade substantially in United States ports. We are not prepared to cause or create any more friction than which now exists in foreign trade matters. We think that the flag of convenience rule has been extended sufficiently far and should not attempt, merely because of substantial contacts, to reach [28] a bona fide flag vessel.

Since the issues presented herein involve a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order to be entered may materially advance the ultimate termination of the litigation in these five cases (as well as other cases pending in this Court), the order to be presented will comply with the requirements of 28 U. S. C., Section 1292 and the applicable rule of the United States Court of Appeals for the Fourth Circuit. While the Court holds that Greek law will apply to each of these five cases, it should be noted that alleged American wage violations will be reserved for later determination.

Walter E. Hoffman

/s/ Walter E. Hoffman

United States District Judge

At Norfolk, Virginia, February 24, 1970.